

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
)	
Amendment of Service and Eligibility Rules)	MB Docket No. 07-172
For FM Broadcast Translator Stations)	RM-11338

Directed to: Office of the Secretary
Attention: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Hope Christian Church of Marlton, Inc. (“Hope”), Bridgelight, LLC (“Bridgelight”), and Calvary Chapel of the Finger Lakes, Inc. (“CCFL”) (together, the “Joint Parties”), by their attorneys, hereby respectfully submit their Petition for Partial Reconsideration with regard to the *Fourth Report and Order and Third Order on Reconsideration*, FCC 12-29, released March 19, 2012, in the above-captioned proceeding (the “*Fourth Report and Order*”).¹ With respect thereto, the following is stated:

The Joint Parties

The Joint Parties are regional noncommercial FM broadcasters. Hope is licensee of WVBV, Medford Lakes, New Jersey; WWFP, Brigantine, New Jersey; WZBL, Barnegat Light, New Jersey; and WOBH, Lindenhurst, New York. It also is permittee of new NCE FM stations in West Grove, Pennsylvania, and Rising Sun, Maryland. Hope is licensee of 23 FM translators which for the most part rebroadcast the signals of Hope’s FM stations. Bridgelight operates two NCE FM stations, WRDR, Freehold Township, New Jersey, and WJUX, Monticello, New York.

¹ The particular aspect of the *Fourth Report and Order* with regard to which the Joint Parties seek reconsideration, namely, the one-to-a-market limitation on translator applications, had never previously been proposed prior to the *Fourth Report and Order*. Therefore, the Joint Parties’ participation is timely.

It is the licensee of four interconnected translators in northern New Jersey and southeastern New York. CCFL is licensee of WZXV, Palmyra, New York, and WZXJ, Bronson, Florida. It operates nine (9) translators in the vicinity of WZXV.

Hope has 45 pending translator applications, 23 of which specify sites in the Philadelphia market. Hope's other translator applications are scattered among adjacent or nearby markets. Bridgelight, headquartered in central New Jersey, has 17 pending translator applications, 16 of which are for communities in the sprawling New York market. *See infra*, p. 5. CCFL has 17 pending translator applications, five (5) of which specify sites in the Buffalo market and three (3) of which are for sites in the Rochester market. (It also has one each in the Binghamton and Elmira, New York markets; none of the others specifies a site in an Arbitron market.) All of these pending applications are intended to increase the reach of the Joint Parties' noncommercial FM stations in the regions they currently serve. The one-to-a-market policy announced for the first time in the *Fourth Report and Order* will effectively block such regional expansion in the name of preventing trafficking in translator authorizations. The policy is counterproductive in terms of the Commission's stated goals. Accordingly, the Joint Parties urge the Commission to adopt waiver procedures to ameliorate the effects of the single-application limit.

Permitting Waivers Will Promote LCRA Policy Goals

The one-to-a-market cap goes farther than is necessary in terms of addressing trafficking and the other application abuses which the Commission, understandably, wants to prevent. The Joint Parties do not oppose adoption of the cap *per se*. Instead, they urge the FCC to adopt an easily-administered waiver policy which will stop the abuses the cap is intended to address while allowing parties to prosecute more than one application per market where anti-trafficking and related policies are not implicated and where there will be no impact on future low power FM

(“LPFM”) assignments. This approach is both workable and better serves the purposes of the Local Community Radio Act of 2010 (the “LCRA”) than the Commission’s wholesale dismissal policy. As shown below, a one-to-a-market approach without an accompanying waiver policy will needlessly diminish the localism that would be available from regional translator operators, but without affording any countervailing benefit for LPFM proponents.

In the *Fourth Report and Order*, the Commission addressed a number of issues arising out of the enactment of the LCRA including the interaction of long-pending FM translator applications and the goal of expanding the availability of channels for the establishment of additional LPFM stations. While the Commission recognizes that translators have provided and will continue to provide significant service in the public interest, it also sought to reduce what it views as trafficking in FM translator construction permits in a manner contrary to the public interest. The Commission seeks to eliminate processing of multiple applications by a single applicant for a single market because it deems such applications as speculative and likely to hinder the auction process. In order to achieve its goals, the Commission imposed both a national cap of no more than 50 applications that will be retained and processed, and no more than one application in a particular market.

The Joint Parties submit that the Commission’s policy goals of deterring speculative filings and trafficking in FM translators and of promoting localism would be far better served by providing for waivers of its one-to-a-market policy under the conditions set forth at pages 7-8, *infra*, than by limiting applicants to one application per market. Such waiver requests would be filed at the time that applicants would otherwise indicate which applications they intend to pursue. Because of the stringent nature of the showings needed to qualify for the contemplated

waivers, the suggested waiver policy would both satisfy the Commission's identified concerns and limit the number of applicants that would be able to seek a waiver.

Furthermore, such a waiver policy would be in accord with the dictates of the LCRA, which dictates that FM translators and LPFM facilities are to be treated equally. In contrast, the policy adopted in the *Fourth Report and Order* of imposing a limit of only one FM translator application to a particular market in effect elevates LPFM applications above those of FM translators. The suggested waiver policy would better maintain parity between the LPFM and FM translator services as required by the LCRA. Moreover, the Commission's concern with speculative and duplicative filings has blinded it to the fact that there can be legitimate reasons for multiple FM translator filings in a market, particularly in larger markets such as New York, and Buffalo. In these larger markets, contour overlaps can be avoided through operation of the proposed waiver conditions, thereby maximizing opportunities for local service. Accordingly, adoption of a waiver policy would better serve the public interest than would retention of the one-application policy without such a provision.

The anti-trafficking policy articulated in the *Fourth Report and Order* discourages rather than encourages the Commission's goal of localism. The limitation of one translator application per market combined with the cap of 50 applications nationwide benefits large, national applicants, which seek to obtain and warehouse as many authorizations as possible, but with relatively little concern for the communities or regions the translators will serve. For such applicants, maintaining one application in each of 50 markets will advance their goal of maximizing population counts. Getting multiple competing applications in target markets out of the way through the one-application policy will serve this goal. In terms of promoting localism,

however, the combination of the one-to-a-market limitation and the cap of 50 will have the opposite effect.

In contrast to entities with a national focus, applicants such as the Joint Parties, which seek to serve their home regions or markets, are limited to only one translator application per market. The one-to-a-market limit is particularly onerous in geographically large markets, including those markets which encompass sub-markets.² In this context, the limitation precludes applicants such as the Joint Parties from reaching much more than a small fraction of their home markets. The New York market, for instance, extends approximately 150 miles from eastern Long Island to Ocean County, New Jersey, thereby making room for a great number of non-overlapping translators which would serve regional submarkets. In any event, the waiver policy set forth below addresses same-market overlaps where they might still occur. Accordingly, the one application per market cap unfairly harms those local and regional applicants that might have filed applications in a limited number of markets for the precise purpose of reaching widely separated communities in a geographically far-flung market. The Commission has not articulated a rational basis for frustrating the service goals of such regional applicants in the name of anti-trafficking.

Moreover, there is nothing improper or abusive of Commission rules in the operation of multiple translators within a single market. First, it must be noted that translators are licensed to communities rather than to markets. Markets, and especially large markets, are made up of many smaller communities, each with its own needs and interests. If applicants are precluded from filing an application for a new translator for more than one of those communities, however, the

² While the Commission has stated that dismissal of such applications will delay rather than deny applicants the ability to effectuate their proposals (*Fourth Report and Order* at ¶57), the historic infrequency of FM translator filing windows and the omnipresent demand for spectrum leave little realistic hope that such applicants' proposals can, in fact, be realized at any point in the foreseeable future.

opportunity for such communities to obtain service will be substantially reduced, as most applications will be dismissed. Thus, communities which happen to be located at the edge of a large market will be inequitably penalized relative to smaller markets simply because they are in a large market.

The Commission has indicated concern that allowing multiple applications in a market to go forward will create spectrum inefficiency and duplicative operations. *Fourth Report and Order* at ¶59. It must be remembered, however, that geographically larger markets may encompass thousands of square miles and stretch more than one hundred miles from edge to edge. In contrast, the signal of an FM translator station covers only a few miles. It is, therefore, easily possible for one licensee to have multiple translators with no overlap in protected signal contours. Such translators do not represent duplicative coverage or spectrum inefficiency but rather the ability to deliver particular programming to a greater part of the area covered by a market. Likewise, terrain limitations may make it impossible for an FM or FM translator station licensed to one community in a market to provide coverage to one or more other portions of the market. In such situations, more than one translator, indeed multiple translators, may be necessary to ensure that target areas in a market can receive service from the station.

The Commission has articulated no reason that justifies its concern that all, or even a majority, of applicants for multiple facilities within a market are engaged in speculative behavior or trafficking or otherwise do not intend to construct the facilities for which they have sought authorizations.³ It is reasonable to question whether one applicant who has sought, say, 100 authorizations within a particular area really has the resources and intent to construct all of the

³ While the Joint Parties agree that the FCC must police situations such as the Houston case cited in footnote 171 in the *Fourth Report and Order* (one applicant with 25 of 27 applications proposing locations within 20 kilometers of downtown), examples this extreme do not justify an across-the-board dismissal of the applications of legitimate, non-speculative regional applicants.

proposed facilities, but applicants with a much smaller number of applications could well have both the means and settled intent to construct all of the facilities authorized over the three-year lives of their construction permits. After all, not all of the permits are likely to be granted on precisely the same day, nor would they all be required to be constructed at one moment, nor would they all have identical expiration dates. Rather, the permittee could adopt a strategy of incrementally improving service to its market by gradually building out the authorized facilities one-by-one over a period of time likely to be somewhat in excess of three years. Because, as the Commission has recognized (*Fourth Report and Order* at ¶ 18), translators typically are inexpensive to construct and operate, this strategy is feasible even for entities with modest means.

Indeed, many NCE licensees have historically adopted such an approach. Numerous NCE licensees have, through the use of one or two full-power stations and a network of translators, provided valuable service over many years to different markets and regions. The Commission expressly recognized in the *Fourth Report and Order* that translators serve the needs of their communities. *Id.* Capping the number of applications to be processed for local and regional applicants, such as the Joint Parties, at one per market would unnecessarily deny these public interest benefits to small communities within larger markets and inhibit the ability of the Joint Parties and similarly situated applicants to reach communities within their markets.

Waiver Criteria

Instead of taking this rather draconian approach, the Joint Parties urge the Commission to adopt a waiver policy pursuant to which applicants would be allowed to retain and prosecute to grant additional FM translator applications above the cap of one, provided that the following conditions are met:

1. The 60 dBu contour of the translator application would not overlap with the 60 dBu contour of any commonly-controlled application.
2. The application will not preclude approval of a future LPFM application in the grid or at the proposed facility's transmitter site.
3. The applicant agrees to accept a condition on its construction permit which disallows sale of the authorization for a profit for four (4) years after the facility commences on-air operations.

The first waiver condition addresses the Commission's concern about multiple filers for the same communities and issues of spectrum efficiency. While not a basis for the anti-trafficking policy, the second limitation addresses the LCRA's requirement that the Commission ensure that licenses for LPFM stations as well as FM translators be made available. The requirement that applications protect LPFM application opportunities in the grid and at the translator applicant's proposed site is consistent with the preclusion requirements established in the *Fourth Report and Order* at ¶ 48. The third condition addresses a stated basis for the cap of one—to award translators to parties who genuinely want to serve their communities rather than just to sell at a profit. Imposing a four-year holding period would be consistent with constraints imposed in similar situations, *see, e.g.*, 47 CFR §73.7005(a).

Taken together, these conditions satisfy the Commission's policy goals without imposing the public interest detriments that accompany the one-to-a-market policy. Indeed, by precluding overlaps by commonly-owned translators, protecting future LPFM opportunities and requiring four years of operation by the applicant, none of the stated rationales for the cap are implicated. Furthermore, the proposed waiver policy's required engineering showings are stringent and could not be made by many applicants. Speculators and traffickers will not qualify for waivers, but regional and local applicants such as the Joint Parties will be able to pursue their plans, albeit through a pared-down complement of applications. In short, the waiver conditions suggested

above promote localism without compromising the public interest underpinnings for the single-application limit.

Ease of Administration

An additional benefit of the proposed waiver policy is that it involves bright-line tests which are not open to subjective evaluation. Either the 60 dBu contours of two translators overlap or they do not; either an LPFM station is precluded at its specified location or it is not; and either the applicant accepts a condition barring sale or it does not. Consequently, this policy would be easily administered, without creating a burden on the agency's resources.

Attached is an engineering statement which provides examples of the showings which could be made to justify a waiver of the one-to-a-market policy. The examples are two of Hope's applications in the Philadelphia market (Arbitron market no. 7). The showings are for two proposed translator locations using 2003 short-form applications now on file. All waiver requests would be filed along with the election notices required under the 50- and one-application caps. As demonstrated in the attachment, the showings are brief, easily prepared, easy to understand and easily checked. Once such showings are included in cap election notices, up or down determinations could be made quickly. This could be done before singletons are identified and settlement or amendment windows are announced. No rule changes are proposed. The processing timetable would not be disturbed. Indeed, it is anticipated that filers who qualify for waivers would be submitting in their election notices a drastically lower number of locations for study than they currently have on file. For example, to meet the requirements of the Joint Parties' waiver criteria, Hope would reduce the number of short-form applications it has for the Philadelphia market from 23 to approximately six (6) on the basis of the proposed waiver constraints and related business considerations.

Conclusion

Consistent with the LCRA, the Commission's goals in this proceeding are to balance the allocation priorities for LPFM stations and FM translators. Both are recognized as valuable in terms of promoting localism. To protect against abuse, speculation and profiteering, the Commission adopted a one-application per market cap for the largest U.S. radio markets, some of which cover thousands of square miles. This cap was adopted without notice and adversely affects local and regional applicants which need more than one new translator to provide service to their target areas. The Joint Parties have proposed a waiver procedure that is consistent with the Commission's goal of preventing speculation and trafficking in translator authorizations. No two commonly-owned translators could serve the same area; future LPFM opportunities would be protected in the manner provided in the *Fourth Report and Order*; those availing themselves of the waiver procedure would not be able to sell their facilities at a profit until they have been on the air for four (4) years; and the procedure would be easily administered. Thus, by adopting the suggested waiver procedure the Commission could promote its policy goals without compromising administrative efficiency.

The waiver procedure proposed herein, or something like it, should be adopted even if its adoption causes slight delays. The LCRA provides that approval of authorizations for translators and LPFM must be "based on the needs of the local community." There is nothing in the statute allowing compromise of this controlling principle for the sake of administrative convenience. In light of the 10 years interested parties have already had to wait for an LPFM filing window, a further slight delay, if it develops, should not be a factor. Indeed, if a waiver policy will assist in a more rational disposition of translator and LPFM applications and actually promote the goals of the LCRA, its implementation is worth waiting for.

WHEREFORE, the premises considered, the Joint Parties respectfully request that the Commission reconsider its cap of one translator application per market and adopt the policy for waiver of that cap described herein.

Respectfully submitted,

HOPE CHRISTIAN CHURCH OF MARLTON, INC.
BRIDGELIGHT, LLC, AND
CALVARY CHAPEL OF THE FINGER LAKES, INC.

By: _____


Harry C. Martin

By: _____


Anne Goodwin Crump

Their Attorneys

Fletcher Heald & Hildreth, PLC
1300 North 17th Street – 11th Floor
Arlington, Virginia 22209
(703) 812-0400

May 8, 2012

ENGINEERING STATEMENT

The attached maps, which were generated using ComStudy software, are examples of the LPFM preclusion studies that will be submitted in connection with individual requests for waivers of the one-to-a-market cap established in the *Fourth Report and Order and Third Order on Reconsideration*, FCC 12-29 (released March 19, 2012). These preclusion studies will demonstrate that, due to the presence of short-spaced co- or first-adjacent full-power FM stations, no LPFM station could be authorized within the relevant market grid or at the site of the translator application for which a waiver is sought.

The attached studies, each using three separate maps, show the impact of co- and first-adjacent FM stations in the vicinity of Browns Mills, NJ, which is in the Philadelphia market, where Hope Christian Church has a pending application, BNPFT-20030317GYO for Channel 235; and in the vicinity of Springfield, PA, also in the Philadelphia market, where Hope Christian Church has another pending application, BNPFT20030317EGO, for Channel 285. Consistent with the methodology employed by the Commission, 2nd-adjacent channel stations are not considered. The circles surrounding the stations identified on each map show the areas where LPFM stations are precluded based on the spacing requirements in Section 73.807(a)(1) of the FCC's rules. The locations of Hope Christian Church's translator applications for Browns Mills, NJ, and Springfield, PA, shown on the maps are based on their geographic coordinates as reflected in CDBS. These studies show that short spacing prevents an LPFM assignment in the Philadelphia grid (the four corners of which are depicted on the maps) and at the proposed translator sites. Thus, the proposed translators do not have a preclusive effect on LPFM assignments in the Philadelphia market based on the analytic framework included in the *Fourth Report and Order* (at para. 48).

Preclusion studies based on other translator application sites will be submitted in essentially the same format. Text will be minimal and only a few exhibits will be necessary to establish the fact the proposed translator will not impact LPFM in the market. Such studies will be submitted as supplements to the notices through which applicants designate the applications they wish to continue processing. In addition to a preclusion showing, each study will demonstrate that the application for which a waiver is sought will have no 60 dBu contour overlap with any commonly-controlled application.

I am president of Hope Christian Church of Marlton, Inc. I hold a bachelors degree in electrical engineering (BSEE) from Drexel University in Philadelphia, PA, and hold an FCC General Class Radiotelephone License. I have prepared numerous FM translator and other broadcast applications approved by the FCC. I declare under penalty of perjury that I prepared this statement and the accompanying studies and that they are true and correct to the best of my knowledge.

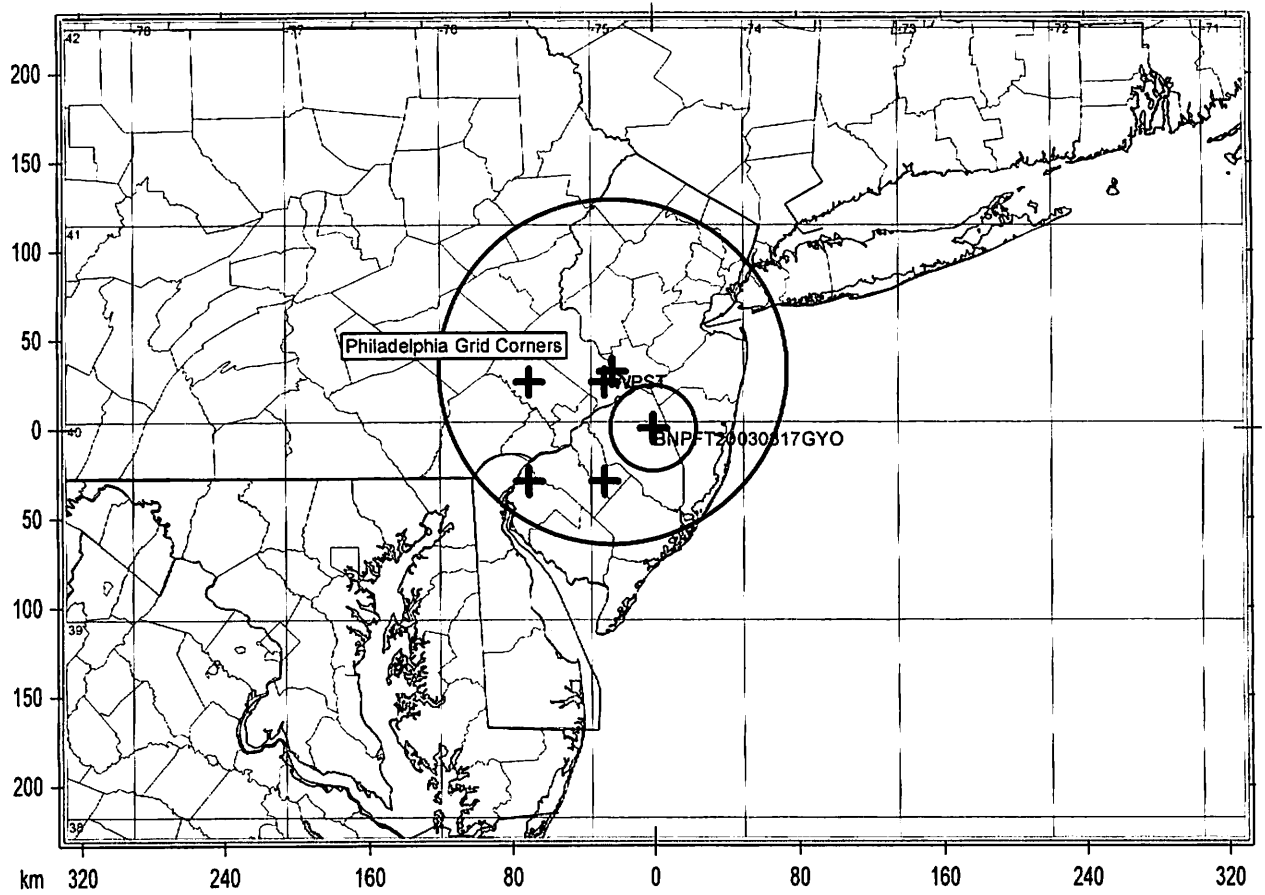
Signed and dated this 8th day of May, 2012.


William C. Luenkemann, Jr.

BROWNS MILLS, NEW JERSEY

FILE NO. BNPFT-20030317GYO

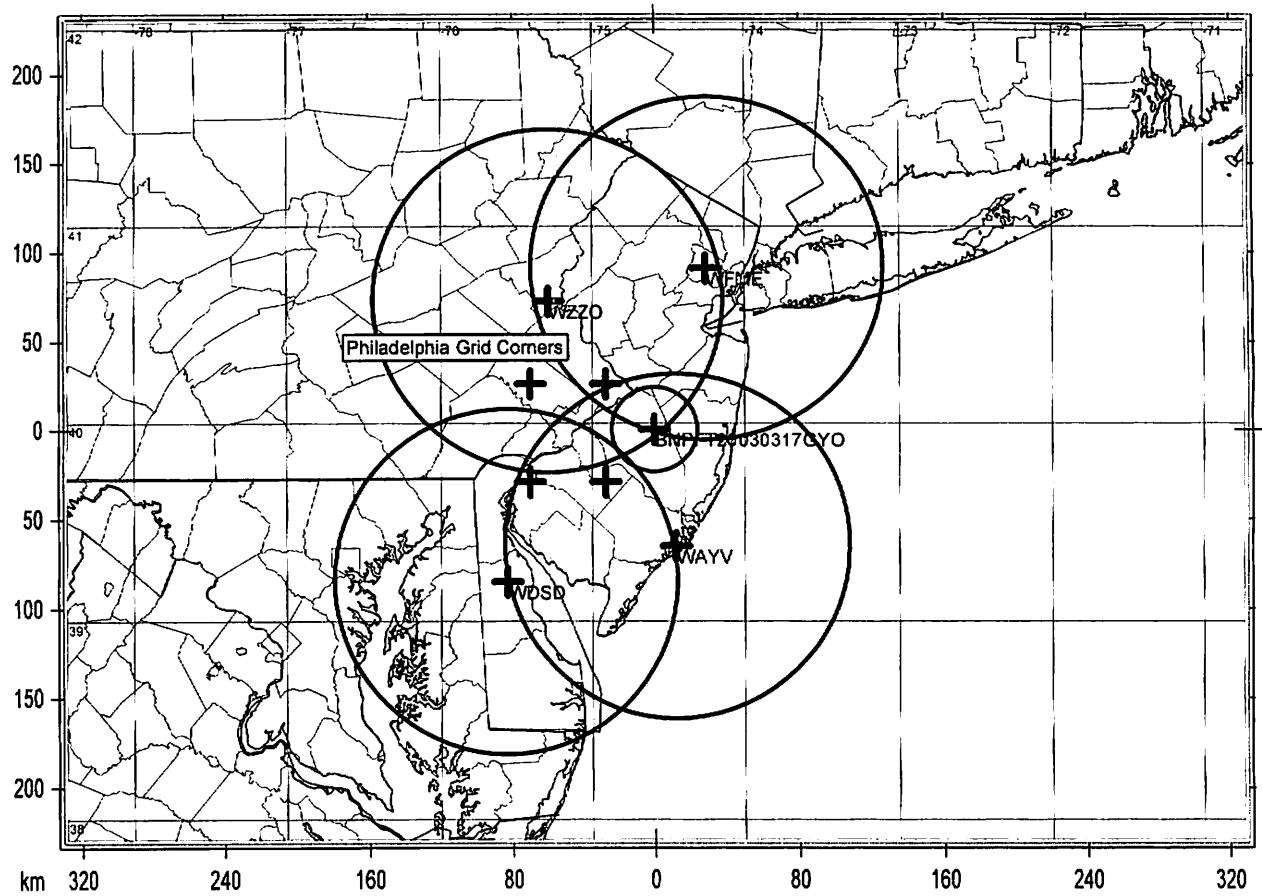
LPFM Preclusion Study - Channel 234 - Browns Mills, NJ



97 km 1st Adj Distance to Class B WPST

County Borders State Borders Lat/Lon Grid

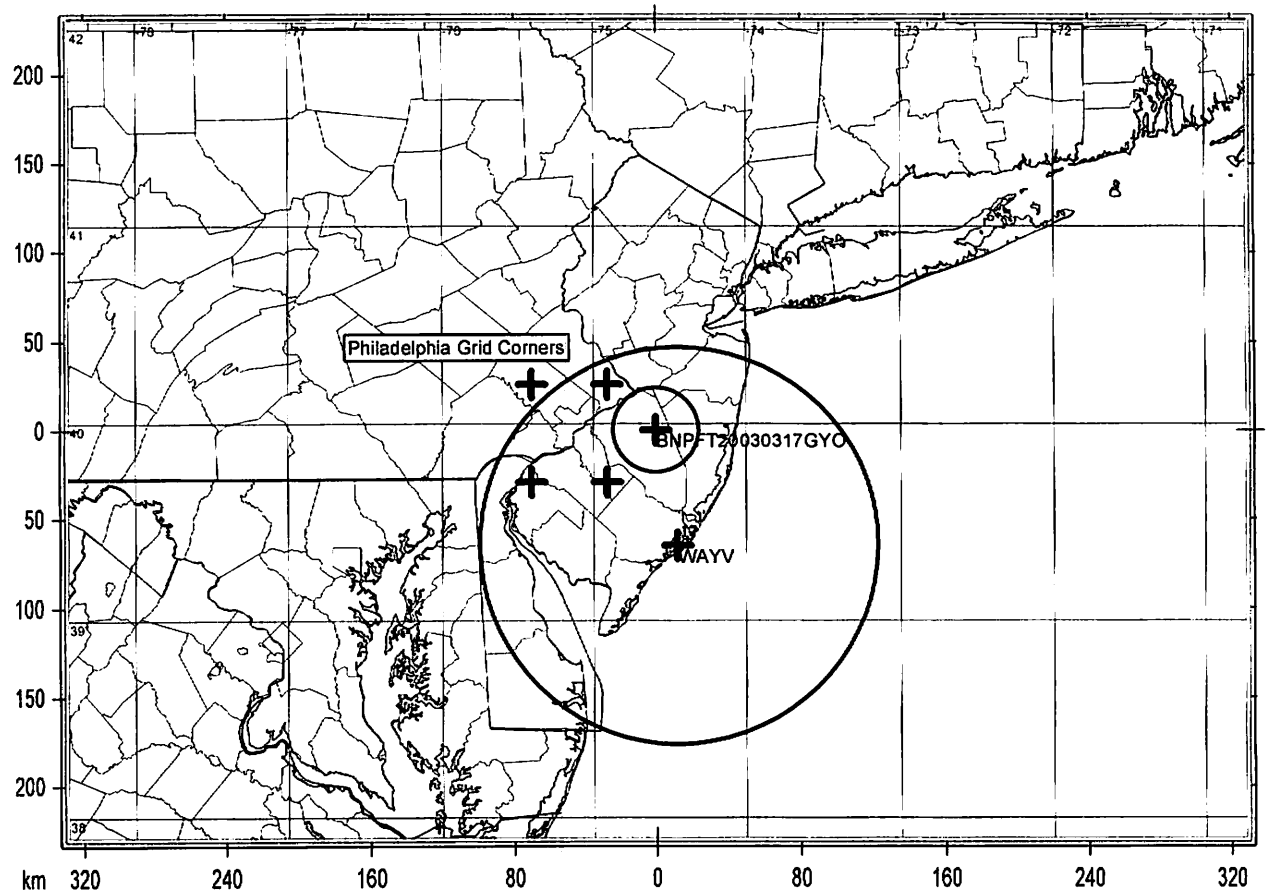
LPFM Preclusion Study - Channel 235 - Browns Mills, NJ



97 km 1st Adjacent Distance to Class B WAYV, WSD, WFME and WZZO

County Borders State Borders Lat/Lon Grid

LPFM Preclusion Study - Channel 236 - Browns Mills, NJ



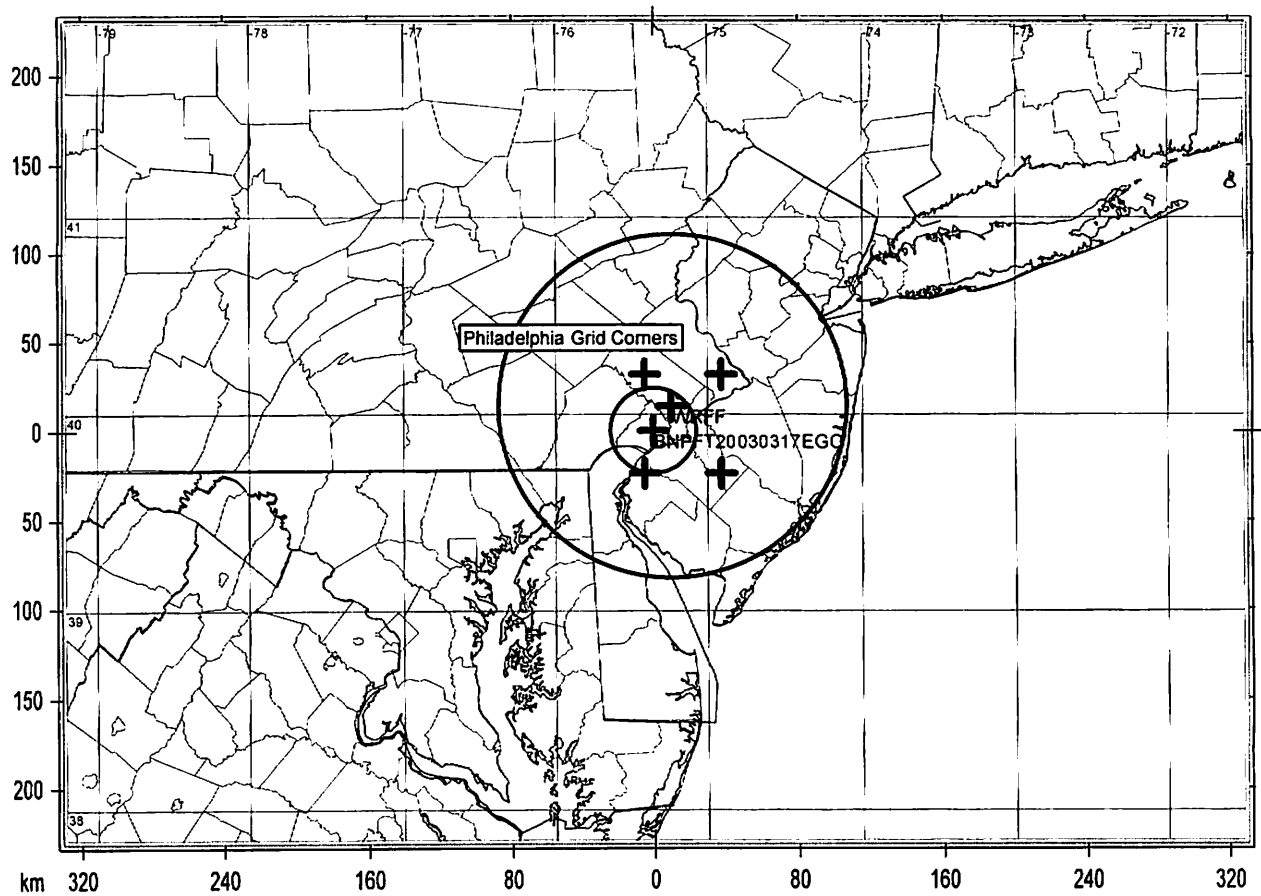
112 km Co-Channel Distance to Class B WAYV

County Borders State Borders Lat/Lon Grid

SPRINGFIELD, PENNSYLVANIA

FILE NO. BNPFT-20030317EGO

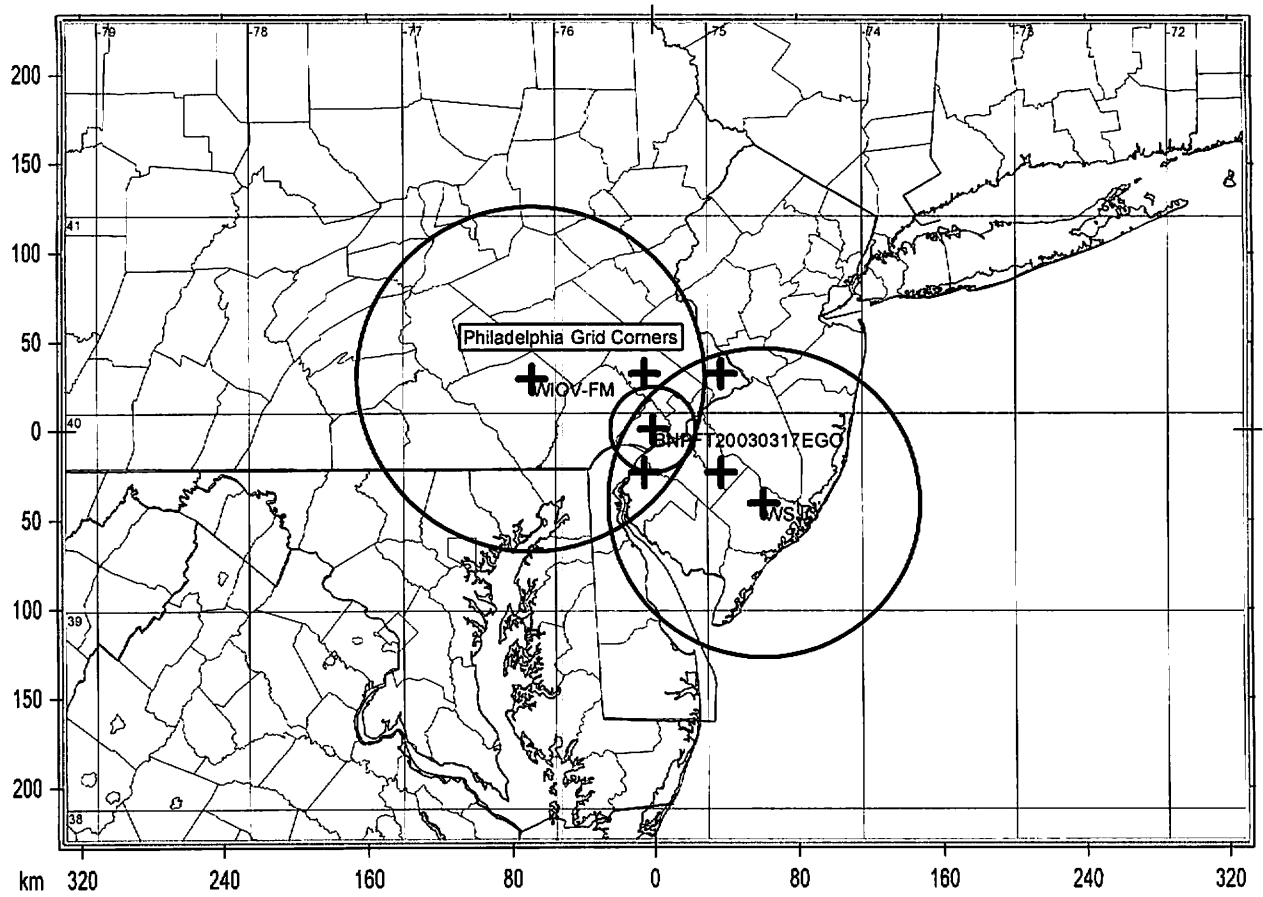
LPFM Preclusion Study - Channel 284 - Springfield, PA



97 km 1st Adj Distance to Class B WRFF

County Borders State Borders Lat/Lon Grid

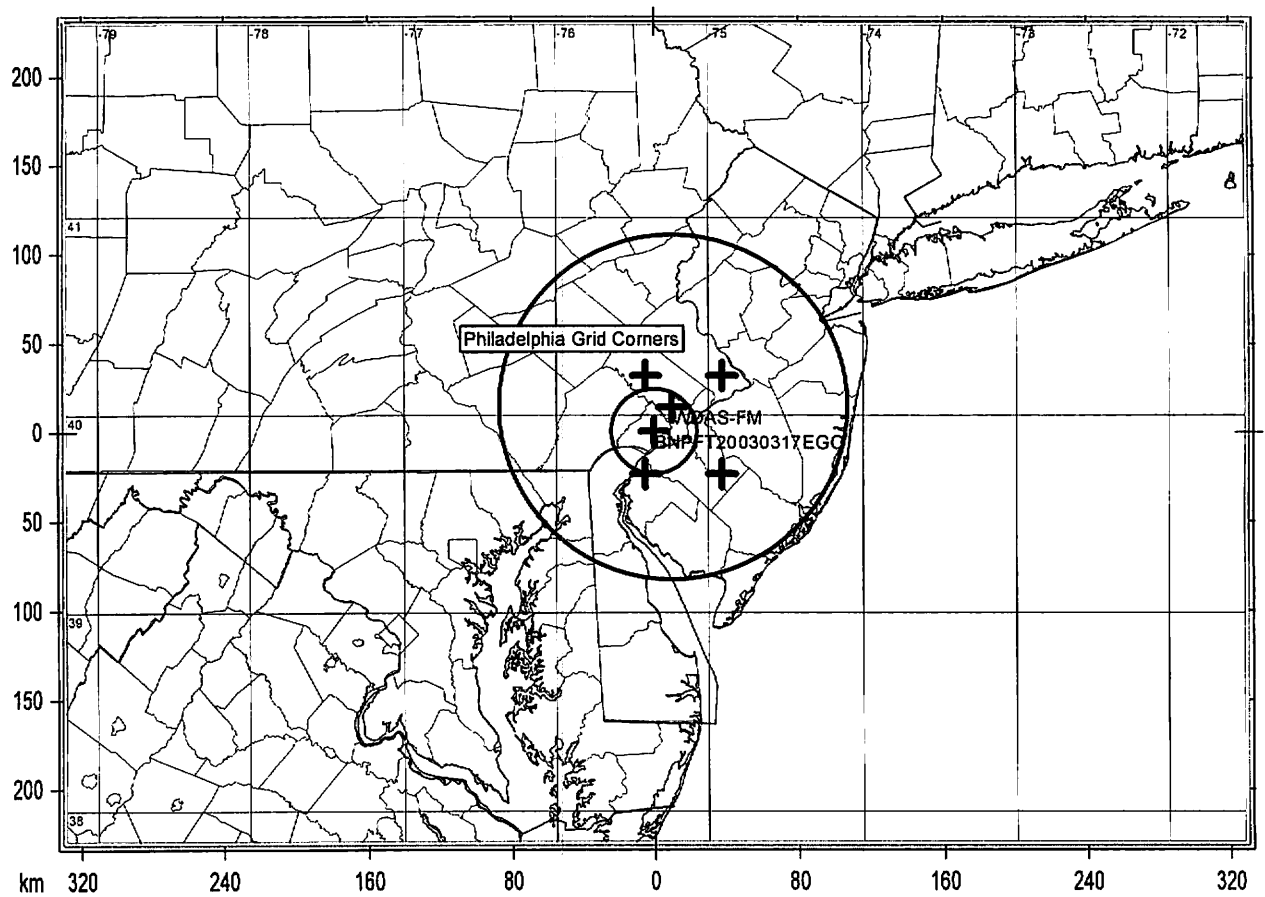
LPFM Preclusion Study - Channel 285 - Springfield, PA



97 km 1st Adj Distance to Class B WIOV-FM and 87 km Co-Channel Distance to Class B1 WSJO

County Borders State Borders Lat/Lon Grid

LPFM Preclusion Study - Channel 286 - Springfield, PA



97 km 1st Adj Distance to Class B WDAS-FM

County Borders State Borders Lat/Lon Grid